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FILED

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Board of Vocational Nursing
and Psychiatric Technicians

8 **BEFORE THE**
9 **BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. VN-2006-1801

13
14 **DONNA DARLENE OWER**
15 1403 Cossacks Place
Glendora, CA 91740

A C C U S A T I O N

16 **Vocational Nurse License No. VN 70359**

17 Respondent.
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20 Complainant alleges:

21 **PARTIES**

22 1. Teresa Bello-Jones, J.D., M.S.N., R.N. ("Complainant") brings this accusation solely
23 in her official capacity as the Executive Officer of the Board of Vocational Nursing and
24 Psychiatric Technicians, Department of Consumer Affairs, State of California.

25 2. On or about January 23, 1976, the Board of Vocational Nursing and Psychiatric
26 Technicians issued Vocational Nurse License Number VN 70359 to Donna Darlene Ower
27 ("Respondent"). The license will expire on October 31, 2011, unless renewed.
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JURISDICTION

3. This accusation is brought before the Board of Vocational Nursing and Psychiatric Technicians ("Board"), under the authority of the following laws. All section references are to the Business and Professions Code ("Code") unless otherwise indicated.

STATUTORY PROVISIONS

4. Code section 2875 permits the Board to take disciplinary action against a vocational nurse licensee.

5. Code section 490 of the Code provides in pertinent part:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued."

"(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

6. Code section 2878 provides in pertinent part:

"The board may suspend or revoke a license issued under this chapter for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(1) Incompetence, or gross negligence in carrying out usual nursing functions.

(2) A conviction of practicing medicine without a license in violation of Chapter 5 (commencing with Section 2000), in which event the record of conviction shall be conclusive evidence of the conviction."

"(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter."

"(f) Conviction of a crime substantially related to the qualifications, functions, and duties of a licensed vocational nurse, in which event the record of the conviction shall be conclusive evidence of the conviction."

"(i) Aiding or assisting, or agreeing to aid or assist any person or persons, whether a licensed physician or not, in the performance of or arranging for a violation of Article 12 (commencing with Section 2220) of Chapter 5.

(j) The commission of any act involving dishonesty, when that action is related to the duties and functions of the licensee."

7. Code section 2878.5 provides in pertinent part:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter, it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist or podiatrist administer to himself or herself or furnish or administer to another, any controlled substance as defined in Division 10 of the Health and Safety Code, or any dangerous drug as defined in Section 4022."

8. Code section 2878.6 provides:

"A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions and duties of a licensed vocational nurse is deemed to be a conviction within the meaning of this article. The board may order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

9. Code section 2859 provides:

"The practice of vocational nursing within the meaning of this chapter [Vocational Nursing Practice Act] is the performance of services requiring those technical, manual skills acquired by means of a course in an accredited school of vocational nursing, or its equivalent, practiced under the direction of a licensed physician, or registered professional nurse, as defined in Section 2725 of the Business and Professions Code. A vocational nurse, within the meaning of this chapter, is a person who has met all the legal requirements for a license as a vocational nurse in this State and who for compensation or personal profit engages in vocational nursing as the same is hereinabove defined."

10. Code section 4022 provides in pertinent part:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

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11. Code section 118(b) provides:

"The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground."

REGULATORY PROVISIONS

12. California Code of Regulations, title 16, section 2518.5 provides:

"The licensed vocational nurse performs services requiring technical and manual skills which include the following:

(a) Uses and practices basic assessment (data collection), participates in planning, executes interventions in accordance with the care plan or treatment plan, and contributes to evaluation of individualized interventions related to the care plan or treatment plan.

(b) Provides direct patient/client care by which the licensee:

(1) Performs basic nursing services as defined in subdivision (a);

(2) Administers medications;

(3) Applies communication skills for the purpose of patient/client care and education; and

(4) Contributes to the development and implementation of a teaching plan related to self-care for the patient/client."

13. California Code of Regulations, title 16, section 2519 provides:

"As set forth in Section 2878 of the Code, gross negligence is deemed unprofessional conduct and is a ground for disciplinary action. As used in Section 2878 "gross negligence" means a substantial departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent licensed vocational nurse, and which has or could have resulted in harm to the consumer. An exercise of so slight a degree of care as to justify the belief that there was a conscious disregard or indifference for the health, safety, or welfare of the consumer shall be considered a substantial departure from the above standard of care."

COST RECOVERY

14. Code section 125.3 provides in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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1 Professions Code section 2052(a), a specified misdemeanor. As part of a negotiated plea, the
2 Respondent was sentenced to three (3) years of probation and ordered to complete 180 hours of
3 community service. (*People of the State of California v. Donna Ower*, Superior Court of
4 California, County of Los Angeles, case no. GA070924, 05/20/2008).

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Unprofessional Conduct - Practicing Medicine without a License)**

7 17. Respondent's license is subject to discipline under Code section 2878(a)(2) for
8 unprofessional conduct because the Respondent has been convicted of the crime of practicing
9 medicine without a license in violation of the Medical Practice Act. (*See Code section 2000*).
10 The circumstances of the criminal conviction are as follows:

11 a. Complainant refers to and by this reference incorporates the allegations set forth
12 above in paragraph 16, as though set forth fully herein.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct – Furnishing a Dangerous Drug)**

15 18. Respondent's license is subject to discipline under Code section 2878.5(a) for
16 unprofessional conduct because the Respondent obtained or possessed in violation of law, or
17 furnished or administered to another, a dangerous drug as defined in Code section 4022.

18 a. Complainant refers to and by this reference incorporates the allegations set forth
19 above in paragraphs 16 and 17 inclusive, as though set forth fully herein.

20 b. On or about August 5, 2005, the Respondent furnished and/or administered silvadene
21 cream 1% or silver sulfadiazine cream, classified as a dangerous drug to patients "J.S." and "J.K."
22 The silvadene cream furnished and/or administered by the Respondent had not been prescribed by
23 a physician and indicated an expiration date of "12/2004" on the container label.

24 **FOURTH CAUSE FOR DISCIPLINE**

25 **(Unprofessional Conduct - Gross Negligence)**

26 19. Respondent's license is subject to discipline under Code section 2878(a)(1) in
27 accordance with California Code of Regulations, title 16, section 2519, for unprofessional
28 conduct and gross negligence in carrying out usual nursing functions.

1 a. Complainant refers to and by this reference incorporates the allegations set forth
2 above in paragraphs 16, 17, and 18 inclusive, as though set forth fully herein.

3 **FIFTH CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct – Dishonest Act)**

5 20. Respondent's license is subject to discipline under Code section 2878(j) and 2878(i)
6 for unprofessional conduct because the Respondent aided or assisted or agreed to aid or assist any
7 person in committed an act involving dishonesty, and the action was related to the duties and
8 functions of a licensed vocational nurse.

9 a. Complainant refers to and by this reference incorporates the allegations set forth
10 above in paragraphs 16, 17, 18, and 19 inclusive, as though set forth fully herein.

11 b. On or about August 5, 2005, the Respondent utilized phony billing codes for patients
12 "J.S." and "J.K." which contradict the clinical notes and medical records for patient "J.S." and
13 "J.K."

14 c. Instead of using billing codes associated for a laser hair removal procedure, the
15 Respondent utilized billing codes that falsely indicate other skin treatments were performed
16 including: "new patient office visit" (code: 99203), "destruction of lesions" (code: 17000, 17003);
17 "complicated incision and drainage of abscess" (code: 10061), "chemical exfoliation for acne"
18 (code: 17360) and "cryotherapy" (code: 17340).

19 d. The Respondent's actions aided or assisted in generating medical bills to an insurance
20 company that falsely claim other skin treatment were performed on patients "J.S." and "J.K."
21 instead of the laser hair removal procedure. A laser hair removal procedure is usually not covered
22 by a medical insurance plan and is typically a cash transaction between the clinic and the patient.

23 e. The Respondent's actions aided or assisted in generating medical bills to an insurance
24 company that falsely claim a licensed physician or physician-assistant performed the fraudulent
25 skin treatment instead of the Respondent. Additionally, in California, a licensed vocational nurse
26 is not allowed to perform a "complicated incision and drainage of abscess" or the "destruction of
27 lesions."

1 **SIXTH CAUSE FOR DISCIPLINE**

2 **(Violation or Attempted Violation of Medical Practice Act)**

3 21. Respondent's license is subject to discipline under Code section 2878(d) for
4 unprofessional conduct because the Respondent violated or attempted to violate, directly or
5 indirectly, or assisting in or abetted the violating of, or conspiring to violate any provision or term
6 of the Vocational Nursing Practice Act (*See Code Section 2840*).

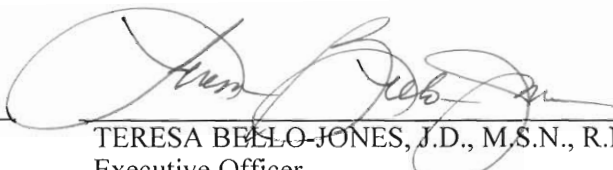
7 a. Complainant refers to and by this reference incorporates the allegations set forth
8 above in paragraphs 16, 17, 18, 19, and 20 inclusive, as though set forth fully herein..

9 **PRAYER**

10 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
11 and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians
12 issue a decision:

- 13 1. Revoking or suspending Vocational Nurse License Number VN 70359, issued to
14 Respondent Donna Darlene Ower;
- 15 2. Ordering Respondent Donna Darlene Ower to pay the Board of Vocational Nursing
16 and Psychiatric Technicians the reasonable costs of the investigation and enforcement of this
17 case, pursuant to Business and Professions Code section 125.3; and,
- 18 3. Taking such other and further action as deemed necessary and proper.

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20 DATED: May 13, 2011.


TERESA BEELO-JONES, J.D., M.S.N., R.N.
Executive Officer
Board of Vocational Nursing and Psychiatric Technicians
Department of Consumer Affairs
State of California
Complainant

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